



Washington Headquarters Services

ADMINISTRATIVE INSTRUCTION

NUMBER 106
October 31, 2005

HRD

SUBJECT: Collaborative Resolution Program (CRP)

- References: (a) Part I, Chapter 5, Section 571-584 of title 5, United State Code¹
(b) Executive Order 12988, "Civil Justice Reform," February 5, 1996²
(c) Presidential Memorandum, "Designation of Interagency Committees to Facilitate and Encourage Agency use of Alternative Means of Dispute Resolution and Negotiated Rulemaking," May 1, 1998³
(d) Section 1614.102(b)(2) of title 29, Code of Federal Regulations, current edition⁴
(e) through (g), see enclosure 1

1. PURPOSE

This Administrative Instruction:

- 1.1. Implements references (a) through (f).
- 1.2. Assigns responsibilities and procedures for the Collaborative Resolution Program (CRP). The CRP offers a number of processes designed to resolve human resources and equal employment opportunity disputes at the earliest point feasible and lowest possible organizational level. The major processes of the CRP include facilitation, mediation, and peer panel.

2. APPLICABILITY AND SCOPE

This Administrative Instruction applies to all civilian and military employees within the organizational entities of the Office of the Secretary of Defense (OSD), the Chairman of the Joint Chiefs of Staff, the Defense Agencies, and the DoD Field Activities serviced by Washington Headquarters Services (WHS). These entities hereafter shall be referred to as "WHS serviced customers."

¹ A copy of this reference may be found online at: <http://www.adr.gov/pdf/adra.pdf> (Adobe Acrobat required)

² A copy of this reference may be found online at: <http://www.usdoj.gov/crt/adr/eo12988.txt>

³ A copy of this reference may be found online at: <http://govinfo.library.unt.edu/npr/library/direct/memos/disputre.html>

⁴ A copy of this reference may be found online at: www.eeoc.gov/federal/1614-new.pdf (Adobe Acrobat required)

3. DEFINITIONS

Terms used in this Administrative Instruction are defined in enclosure 2.

4. POLICY

It is WHS policy to use and offer Alternative Dispute Resolution (ADR) services to WHS serviced customers as an alternative to litigation or formal administrative procedures to the maximum extent appropriate. The CRP is a resource for informal dispute resolution. The goal of the CRP is to fully or partially resolve disputes at the earliest point feasible, by the fastest and least expensive means, and at the lowest possible organizational level. Parties must knowingly and voluntarily enter into a CRP process. Likewise, parties have the right to voluntarily opt out of a CRP process at any point prior to resolution for any reason, to include pursuing formal avenues of redress.

5. RESPONSIBILITIES

5.1. The Director, Washington Headquarters Services shall:

5.1.1. Exercise overall responsibility for managing the CRP within OSD, and oversight for all WHS serviced activities.

5.1.2. Advise and represent the Secretary of Defense on CRP matters affecting WHS serviced customers.

5.1.3. Monitor progress of all program elements.

5.1.4. Promote the CRP.

5.1.5. Provide necessary resources to support the CRP.

5.1.6. Ensure that data reflecting CRP activity for WHS serviced customers are provided to the DoD General Counsel and the DoD ADR Coordinating Committee as appropriate.

5.2. The Assistant Director, Equal Employment Opportunity Programs Division (EEOPD), shall:

5.2.1. Assist the Director of WHS by managing the CRP.

5.2.2. Acquire and retain a fully qualified ADR Specialist to provide guidance and assistance on CRP policy, procedures, and initiatives.

5.2.3. Institute a process that ensures WHS serviced customers are made aware of the benefit of resolving conflicts at the earliest possible point feasible.

5.2.4. Ensure information regarding the CRP is publicized throughout WHS serviced customers with sufficient frequency so that all customers are properly informed.

5.2.5. Serve as an OSD/WHS representative on the DoD ADR Coordinating Committee.

5.3. The Alternative Dispute Resolution Specialist, shall:

5.3.1. Assist the Assistant Director, EEOPD in managing the CRP by developing procedures, providing program oversight, serving as an agency neutral, and ensuring full implementation of this Administrative Instruction.

5.3.2. Provide quick, consistent, and responsive service to CRP inquiries:

5.3.2.1. Respond within five (5) days of initial contact.

5.3.2.2. Conduct an intake session with the parties to discuss the circumstances, issues, and desired outcomes.

5.3.2.3. Give thorough information and help participants assess their options and appropriate avenues for dispute resolution.

5.3.2.4. Advise all participants of their rights and responsibilities in regards to voluntary participation, confidentiality (and limitations thereof), and other related items.

5.3.2.5. In appropriate situations, provide customized conflict resolution interventions to fit the unique needs of the WHS serviced customer.

5.3.3. Assess the appropriateness of the particular ADR process to the conflict by ensuring that each party is able to participate effectively within the context of ADR and willing to participate in good faith. ADR generally is not appropriate in cases when:

5.3.3.1. A definitive or authoritative resolution of the matter is required;

5.3.3.2. The matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made; and

5.3.3.3. A full public record of the proceeding is important.

5.3.4. If mediation is the service to be provided, determine the number of mediators appropriate to the circumstances of each case. Acquire neutrals in a cost-effective manner, such as, but not limited to, utilizing the DoD Roster of Neutrals, the Health and Human Services Sharing Neutrals Program, and the DoD Office of Complaint Investigations' mediation program when appropriate.

5.3.5. When serving as a neutral, facilitate constructive dialogue between parties, serve as a feedback mechanism, assist employees seeking explanation on policies and procedures, explore options for resolving concerns, and assist WHS serviced customers with alternatives.

5.3.6. Preserve confidentiality to the extent permitted by law, regulation, and policy, treat all parties equally with dignity and respect, and strive for the highest level of ethical practice.

5.3.7. Coordinate signed settlement agreements with WHS Office of General Counsel when appropriate.

5.3.8. Ensure that participants are given the opportunity to evaluate CRP neutrals.

5.3.9. Monitor neutral effectiveness and the CRP impact on the timely, efficient, and effective resolution of organizational conflict.

5.3.10. Conduct periodic information sessions and training programs related to the CRP.

5.3.11. Prepare and present reports, briefings, and presentations to management officials regarding the CRP and its effectiveness. Identify issues and concerns regarding organization dispute resolution matters, human relations, and organizational climate.

5.3.12. Serve as an OSD/WHS representative on the DoD ADR Coordinating Committee.

5.4. The Component Heads of Washington Headquarters Services serviced organizations, shall:

5.4.1. Encourage a positive dispute resolution climate and ensure that CRP procedures are disseminated widely and understood at all levels within their organization.

5.4.2. Promote voluntary use of the CRP without coercion or reprisal.

5.4.3. Encourage employees to address conflicts at the earliest point feasible and lowest possible organizational level.

5.5. All Customers serviced by Washington Headquarters Services, shall:

5.5.1. Support and utilize the CRP to the maximum extent possible.

5.5.2. Seek resolution of issues, concerns, and disputes in good faith.

6. CRP PROCESSES

The following processes are available through the CRP. Each situation has a unique blend of circumstances that would make one of these processes more appropriate than another. The ADR Specialist shall assess and determine which process is most appropriate in each case. The ADR

Specialist maintains a list of qualified individuals or groups that provide professional dispute resolution services. Parties shall choose a mutually acceptable neutral that will help manage their conflict. The following methods are available through the CRP:

6.1. Facilitation. Facilitators use a variety of techniques to improve the flow of communication in a meeting, discussion, or debate. The purpose of facilitation is to help parties clarify and achieve their specific group objectives. A facilitator does not become involved in the substantive issues, but rather focuses on the process of communication. Therefore, facilitators remain impartial to the topics and issues under discussion. In most situations, WHS serviced customers could benefit from facilitation when a collaborative group decision-making process is appropriate.

6.2. Mediation. Mediation is a voluntary process that is managed by a qualified, impartial and neutral third party that has no decision-making authority. The purpose of mediation is to provide an equal and fair process that allows parties to reach an acceptable resolution of issues in dispute. Mediation is one of the most popular processes utilized and has four basic phases:

6.2.1. Phase 1 - Introduction. Parties are given information about the mediation process. The mediator defines mediation and the mediator's role and describes confidentiality, impartiality, and neutrality. Once parties have a clear understanding of the process, they mutually agree to continue participation.

6.2.2. Phase 2 - Discuss Issues. Parties are given a reasonable amount of uninterrupted time to discuss the circumstances surrounding the dispute. They can talk about their concerns and underlying issues.

6.2.3. Phase 3 - Develop Options. After gaining an understanding of the issues and interests, the parties brainstorm possible resolution options. The parties negotiate line items in an open session. In some circumstances, mediators may meet with the parties in individual caucuses.

6.2.4. Phase 4 - Write Agreement. Once all issues have been thoroughly discussed and a model resolution has been created, an agreement is written in clear, understandable terms. The parties may review the agreement with an attorney if they wish, but it is not required. Parties sign a Settlement Agreement to finalize the process. While written agreements are preferred, oral agreements may be utilized, with the exception of equal employment opportunity (EEO) settlements.

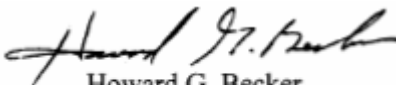
6.3. Peer Resolution Panel. A peer panel is a group of trained employees who hear and make a binding decision on employee disputes. The principal objective of this method is to provide a resolution environment where a group of individuals, with no knowledge of the situation or stake in the outcome, consider the facts provided and make an impartial decision about the resolution of a dispute. Panel members are impartial, do not advocate for employees or supervisors, and have one shared goal: to judge whether policy and procedures have been properly and consistently applied.

7. PROCEDURES

Procedures for this Administrative Instruction are detailed in enclosure 3.

8. EFFECTIVE DATE

This Administrative Instruction is effective immediately.



Howard G. Becker
Director

Enclosures - 6

- E1. References, continued
- E2. Definitions
- E3. Procedures
- E4. Scheduling Letter
- E5. Agreement to Mediate form
- E6. Settlement Agreement template

E1. ENCLOSURE 1

REFERENCES, continued

- (e) DoD Directive 5145.5, "Alternative Dispute Resolution," April 22, 1996
- (f) Equal Employment Opportunity Management Directive 110, "Federal Sector Complaints Processing Manual," November 9, 1999⁵
- (g) DoD 8910.1-M, "DoD Procedures for Management of Information Requirements," June 10, 1998

⁵ A copy of this reference may be found online at: www.eeoc.gov/federal/md110/md.html

E2. ENCLOSURE 2

DEFINITIONS

E2.1. DEFINED TERMS.

E2.1.1. Collaborative Resolution Program. The vehicle for providing informal dispute resolution services to WHS serviced customers.

E2.1.2. Dispute. A perceived conflict between two or more interdependent parties. The terms "dispute" and "conflict" shall be used interchangeably but in no way limit the type of issues the CRP handles. The CRP is designed to cover anything from a simple misunderstanding to a litigated situation.

E2.1.3. Facilitator. An acceptable, impartial third party to a group that contributes process and structure to help improve the way the group identifies and solves problems and makes decisions.

E2.1.4. Impartiality. Displaying a freedom from favoritism, bias, and/or prejudice towards the parties and potential resolution. The CRP neutral does not have a say in the specific issues or resolution options of a conflict resolution process. Likewise, a CRP neutral does not have a stake in the outcome of any conflict resolution process.

E2.1.5. Mediator. A qualified, impartial third party to individuals in a dispute that implements a structured, confidential process and a variety of techniques in order to help them achieve their own mutually acceptable solution.

E2.1.6. Neutral. For the purpose of this Administrative Instruction, any person or group who supports the CRP and who is not directly involved in the dispute. This person or group may include one or more of the following: ADR Specialist, Mediator, Fact-Finder, Peer Panel member, or other ADR professional.

E2.1.7. Peer Panelist. An individual who serves on a peer panel to hear the facts of and make a binding decision on employee disputes.

E2.1.8. Participant or Party. Any person or group that utilizes the CRP. This term replaces "complainants" and "respondents" because the responsibility of conflict resolution is shared with all parties in a perceived conflict.

E2.1.9. Trained. Pursuant to Chapter 3, Section IV of reference (f), refers to the qualifications of any person that serves as a CRP neutral, which must include professional training and experience in the CRP process utilized.

E3. ENCLOSURE 3

PROCEDURES

E3.1. FACILITATION.

Facilitation may be used to foster more productive communication patterns within organized groups consisting of two or more participants.

E3.1.1. Any WHS serviced customer may request facilitation by contacting the ADR Specialist. However, the ADR Specialist must discuss the possibility of facilitation with the appropriate organization management official.

E3.1.2. Information regarding the goals of the facilitation and the organization's decision-making authority shall be considered.

E3.1.3. A facilitator shall be assigned only after the ADR Specialist deems facilitation appropriate and the management official agrees to the process. Once these criteria are met, a facilitated meeting shall be scheduled with the participants.

E3.1.4. Since the CRP process is voluntary, the facilitator shall request permission from the participants to continue with the process.

E3.2. MEDIATION.

The objective of mediation is to assist the parties to voluntarily reach an acceptable resolution of the issues in dispute.

E3.2.1. Parties must be informed in writing of the time, place, and process of the mediation. The letter will specify the rights, responsibilities, and expectations of all participants, including the mediator. (See enclosure 4).

E3.2.2. An "Agreement to Mediate" form specifies the process, the mediator's role, and the implications of potential settlements. (See enclosure 5). The parties must sign this agreement before the process begins. Parties must know that the process is voluntary, confidential (including limitations thereof), includes their right to representation, and that signed agreements are binding.

E3.2.3. When a resolution is reached, the parties, with the assistance of the mediator, shall prepare a Settlement Agreement. (See enclosure 6). The parties shall be informed of their right to have the agreement reviewed by a representative of their choosing before the agreement is signed. Once appropriate officials have reviewed and the parties have signed, the Settlement Agreement becomes a binding document.

E3.3. PEER RESOLUTION PANEL.

E3.3.1. Filing. A request for the Peer Resolution Panel must be submitted in writing and include:

E3.3.1.1. Name of participant and his/her representative, if any;

E3.3.1.2. Participant's position, title, series, and grade;

E3.3.1.3. The organizational entity to which the participant is assigned;

E3.3.1.4. A clear statement of the issue, including sufficient detail to identify and clarify the matter in dispute to include times, dates, names, places, and other pertinent data;

E3.3.1.5. When applicable, a statement of previous resolution attempts and outcome, including copies of written responses, if available; and

E3.3.1.6. A specific statement of the relief sought that must be directly personal to the participant.

E3.3.2. Neutral Facilitator. A trained facilitator shall be notified once a Peer Resolution Panel has been requested and shall remain on standby until needed. The functions of the facilitator shall be explained in the following sections.

E3.3.3. Panel Arrangement.

E3.3.3.1. Pre-Panel Mediation. A CRP neutral shall make every effort to schedule and facilitate the pre-hearing mediation within fourteen (14) business days of receiving the Peer Resolution Panel request as an attempt to informally resolve the dispute. If all parties come to a mutually agreeable resolution, then the neutral shall assist in drafting a Settlement Agreement. If the pre-hearing mediation does not end in resolution, then the facilitator shall begin preparing a panel as described in the following subsection.

E3.3.3.2. Panel Selection. Panel members can be generally categorized as employees or managers. A peer is defined as one of a similar category, and a non-peer consists of those of a different category. The panel shall consist of three (3) members; two (2) peers and one (1) non-peer.

E3.3.3.2.1. The initiating party shall randomly select three names from a pool of trained peers. Two of the three chosen peers shall serve on the panel with the remaining peer serving as an alternate.

E3.3.3.2.2. The initiating party shall randomly select two names from a pool of trained non-peers. One non-peer shall serve on the panel with the remaining non-peer serving as an alternate.

E3.3.4. Panel Interviews. The Peer Resolution Panel interviews shall occur within thirty (30) calendar days of the panel selection.

E3.3.4.1. The neutral facilitator shall gather all relevant documents and policies for panel members.

E3.3.4.2. The interviews shall be completed within one business day if possible.

E3.3.4.3. Only panel members may ask questions of the witnesses. Participants are not permitted to question or cross-examine witnesses by opposing sides.

E3.3.4.4. The panel shall interview only one witness at a time. No other witnesses shall be present during the interview.

E3.3.4.5. The initiating employee's representative may be present only during their respective party's interview.

E3.3.4.6. The panel shall interview the employee, appropriate supervisors, and any other employees with relevant information on the matter that any panel member chooses to call.

E3.3.4.7. Only the facilitator, panelists, and witnesses are allowed at the interview site during the proceeding.

E3.3.4.8. Witnesses may be current or former employees who have relevant information and are willing to participate in the hearing.

E3.3.4.9. The facilitator shall help the panel summarize the major points of the interview and shall help the panel discuss the evidence (documents and dialogue) and issues.

E3.3.5. Final Decision.

E3.3.5.1. Once all evidence has been reviewed, the panel shall vote on the outcome to grant, modify, or deny the employee's request.

E3.3.5.2. Voting shall be done by secret ballot until a majority decision is reached. All ballots shall then be destroyed.

E3.3.5.3. The facilitator shall help the panel draft a decision letter to notify the party and appropriate management officials of the final panel decision.

E3.3.5.4. As a condition of participation, panel members agree that the majority vote, regardless of personal feelings about the case, shall be final and agree to sign the decision letter.

E3.3.5.5. Appropriate officials shall review the draft decision letter to ensure compliance with statute and DoD rules and regulations. Once approval is given, the decision of the Peer Resolution Panel is final and binding. The decision letter must be presented to the parties within five (5) business days after the final panel meeting. The panel may also make

recommendations regarding Agency policies and procedures, but have no authoritative power to implement them.

E3.3.6. Additional Guidelines.

E3.3.6.1. All participants in the peer panel process, including panel members, facilitators, initiating employees, managers, and witnesses are obligated to maintain complete confidentiality at all times. Panelists who violate confidentiality shall be banned from future participation in the Peer Resolution Panel process.

E3.3.6.2. Potential panel members may not serve on the panel if there is a conflict of interest including, but not limited to family relation, involvement in making the decision being grieved, personal knowledge, or previous connection to the matter or parties, etc.

E3.3.6.3. Any and all records generated by the Peer Resolution Panel hearing are confidential and shall be maintained in the CRP filing system located in the EEO PD.

E3.4. CRP PROCEDURES FOR EEO COMPLAINTS.

E3.4.1. The CRP is available to complainants during any stage of the EEO process.

E3.4.2. WHS serviced customers who are considering filing an EEO complaint have the option of choosing either the CRP or the administrative complaint process. Should parties elect the CRP process and their EEO-related issues are not settled, they retain their rights to pursue the formal complaint process. In this case, information pertaining to the circumstances that initiated the EEO complaint shall be documented and processed to fulfill the requirements of reference (f). The initiating parties retain their right to remain anonymous during the informal EEO process. Before a party chooses to file a formal EEO complaint, s/he shall be notified that anonymity is relinquished in the formal process.

E3.4.3. Where a WHS serviced customer chooses to participate in a CRP process to resolve an EEO-related complaint, the pre-complaint processing period shall be ninety (90) days. If the claim has not been resolved before the ninetieth day, a notice of the right to file a discrimination complaint shall be provided by the ADR Specialist. The notice shall inform the complainant of the right to file a discrimination complaint within fifteen (15) days of receipt of the notice, of the appropriate official with whom to file a complaint, and of the complainant's duty to assure that the agency is informed immediately if the complainant retains counsel or a representative.

E3.4.4. Complainants that achieve resolution to an EEO complaint must sign a written Settlement Agreement. Parties must agree that there are no remaining issues, obligations, or claims to date and that the agreement constitutes a full and complete settlement between the parties as to the issues in controversy.

E3.5. CRP PROCEDURES FOR OTHER FORMAL PROCESSES.

E3.5.1. References (a) through (f) encourage the use of dispute resolution processes as an alternative to formal processes. In addition, reference (a) encourages agencies to remove any barriers that prevent the use of ADR. The CRP may be used as an appropriate alternative resource to other administrative processes of redress managed by WHS. In such instances, WHS serviced customers should contact the ADR Specialist when it is believed that facilitation, mediation, or a peer resolution panel would be beneficial.

E4. ENCLOSURE 4

SCHEDULING LETTER

Dear Sir and Madam:

This letter is to confirm your participation in a mediation conference with the Collaborative Resolution Program (CRP) within the Equal Employment Opportunity Programs Division. The participants in this mediation conference will be _____ and _____ (hereinafter referred to as "the parties"). _____ and _____ will serve as mediators. The mediation conference is scheduled for ____ a.m. on _____ at the following location:

The Polk Building
2521 South Clark Street, Suite 4000
Arlington, Virginia 22202

The purpose of the mediation conference is to achieve an acceptable solution that satisfies all parties and negates any need for further action on anyone's behalf aside from those steps that may be agreed to as part of the settlement agreement. However, in the event a settlement agreement cannot be reached, parties retain the rights afforded to them in formal administrative processes where appropriate and allowed by policy or statute.

The entire mediation conference is confidential, with the exception of threats of violence or issues alleging government waste, fraud, and abuse which are required, by law, to be reported. If an agreement is unable to be reached during the conference, the parties will neither report nor discuss with anyone issues raised by the participants during the mediation conference, except for threats of violence or issues alleging government waste, fraud, and abuse. The mediator will not willingly serve as a witness nor provide testimony in future civil or administrative proceedings regarding the issues addressed during the mediation conference.

If the mediation conference results in settlement, a settlement agreement will be documented, signed by all parties, and made part of the official CRP case file. If the mediation conference does not result in a resolution, only the following information will be officially maintained: (1) who participated in the conference; (2) who the mediators were; (3) the date and length of the meeting; and (4) that an agreement was not reached. It should be understood by participants that by agency policy, the agreement will need the written approval of an agency official with appropriate authority.

Thank you for your willingness to attempt settlement of this situation through mediation. I am hopeful that the meeting will be of benefit to all participants. Please review the attached "Mediation Description" and "Agreement to Mediate" documents, the latter of which will be signed by all parties before the mediation session begins. You may contact me at (703) 699-1805 if you have any questions or concerns.

Sincerely,

ADR Specialist

Attachments:
As Stated

E6. ENCLOSURE 6

SETTLEMENT AGREEMENT TEMPLATE

In the interest of promoting the early resolution of disputes, _____ and _____ voluntarily agree to settle their issues in dispute.

We, the undersigned (herein after referred to as the Parties), agree to the following:

- 1.
- 2.

In addition, the parties:

Acknowledge that they fully understand the terms of this settlement agreement and are under no duress, coercion, or any mental impairment;

Have the right to seek advice from legal counsel before signing this agreement. Both parties acknowledge that they have read this settlement agreement, understand the terms, and agree to be bound by its provisions;

Agree that there are no remaining issues, obligations, or claims to date and that this settlement agreement constitutes a full and complete agreement between the parties. The parties' signatures hereunder signify that they are in full agreement with the above terms and intend to be bound by the same;

Understand that this settlement is not an admission of guilt or any wrongdoing by either party. These terms do not establish precedent for future settlement discussions involving any third party. Neither party shall make or permit representations to the contrary;

Agree to keep the terms of this agreement confidential. It is the agency's policy to keep the terms of this agreement confidential, unless specific conditions warrant partial or full disclosure. Such conditions may include disclosure to individuals helping to implement this agreement, who need to know according to the Privacy Act of 1974, or as ordered by an entity of competent jurisdiction; and

Agree that they shall make a good faith effort to implement this settlement agreement. The parties understand that in the event of a perceived breach of contract, they have the option of returning to mediation and/or pursuing formal avenues for redress.

Should concerns arise about this Settlement Agreement, please contact the ADR Specialist at (703) 699-1805.

Date

Date